

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RAYMOND WIERZBIC, BERNICE WIERZBIC,
BRIAN WIERZBIC, AND ANGELENE WIERZBIC,

Plaintiffs,

v.

Case Number: 1:13-CV-00978-WMS-LGF

COUNTY OF ERIE,
ERIE COUNTY SHERIFFS DEPARTMENT,
ERIE COUNTY SHERIFF, TIMOTHY HOWARD,
Individually and in his official capacity,
DEPUTY ERIE COUNTY SHERIFF MICHAEL HOOK,
Individually and in his official capacity,
DEPUTY ERIE COUNTY SHERIFF JASON WEISS,
Individually and in his official capacity,
DEPUTY ERIE COUNTY SHERIFF THOMAS WAS,
Individually and in his official capacity,
DEPUTY ERIE COUNTY SHERIFF JAMES FLOWERS
Individually and in his official capacity,
TOWN OF AURORA,
EAST AURORA POLICE DEPARTMENT,
EAST AURORA POLICE CHIEF RONALD KROWKA,
Individually and in his official capacity,
EAST AURORA POLICE OFFICER ROBERT BRAEUNER,
Individually and in his official capacity,

Defendants.

COUNTY DEFENDANTS
REPLY TO THE PLAINTIFFS' RULE 56 STATEMENT OF
FACTS AND COUNTY'S COUNTER STATEMENT OF FACTS

The Defendants, COUNTY OF ERIE (hereinafter "Erie County"), ERIE COUNTY SHERIFF'S DEPARTMENT (hereinafter "Sheriff's Department"), ERIE COUNTY SHERIFF, TIMOTHY HOWARD (hereinafter "Sheriff Howard"), individually and in his official capacity, DEPUTY ERIE COUNTY SHERIFF MICHAEL HOOK, individually and in his official

capacity, DEPUTY ERIE COUNTY SHERIFF JASON WEISS, individually and in his official capacity, DEPUTY ERIE COUNTY SHERIFF THOMAS WAS, individually and in his official capacity, and DEPUTY ERIE COUNTY SHERIFF JAMES FLOWERS, individually and in his official capacity, (collectively the “County Defendants”), submit the following response to plaintiffs’ Statement of Undisputed Facts (hereafter “Plaintiffs’ Rule 56 Statement”):

1. Admit the allegations in paragraphs 1, 2, 7 and 14 of Plaintiffs’ Rule 56 Statement.
2. With respect to paragraph 3 of Plaintiffs’ Rule 56 Statement, the County Defendants cannot admit or deny the allegations of paragraph 3 as it pertains to the ownership of property as the County Defendants have not been provided with any real estate documentation involving real property in the Town of Aurora and therefore they do not possess personal knowledge of the legal ownership of 42 Willis Road. The County Defendants admits so much of the statement that that asserts Raymond and Bernice Wierzbic are the parents of Brian and Angelene. The County Defendants have no personal knowledge as to the use of the property for their collective vegetable farming business and can neither admit nor deny said allegations.
3. With respect to paragraph 4 of Plaintiffs’ Rule 56 Statement, the County Defendants admit that Erie County Sheriff’s Deputy Michael Hooch entered onto the property at 49 Willis to effectuate service of legal papers upon Raymond Wierzbic. The County Defendants admit upon information and belief, that Plaintiffs Raymond, Brian and Bernice Wierzbic were on the property at the time. The County Defendants admit, upon information and belief that the Plaintiffs requested that Deputy Hooch vacate the premises; that an altercation ensued and that Plaintiffs Raymond, Brian and Bernice were arrested and tried in the East Aurora Town Court. The County Defendants also admit that Deputy Hooch testified at the trial.

4. With respect to paragraphs 5 and 6 of Plaintiffs' Rule 56 Statement, the County Defendants admit there was a transcript of the proceedings that occurred in Aurora Town Court, but the County Defendants object to the remainder of the allegations in paragraphs 5 and 6 to the extent that testimony is quoted from transcripts, as the transcripts would be the best record of the alleged testimony.

5. With respect to the paragraphs 8, 9, 10, 11, 12, and 13, the County Defendants admit that there is a manual pertaining to civil process maintained by the Erie County Sheriff's Department but object to the remainder of the allegations as the manual itself is the best evidence.

COUNTER STATEMENT OF FACTS


6. Plaintiffs commenced this action by the filing of a complaint on September 27, 2013 asserting the following causes of action against all Defendants: Federal claims pursuant to 42 U.S.C. 1983 for (1) excessive force; (2) malicious prosecution; (3) refusing to prevent [presumably use of force]; (4) conspiracy; (5) violation of 1st Amendment rights and (6) violation of 5th Amendment rights. The complaint also alleges State claims for: (1) false arrest; (2) false imprisonment; (3) assault; (4) battery; (5) intentional infliction of emotional distress; (6) negligent hiring and retention and (7) negligent training and supervision. (Complaint attached to County Defendants moving papers as Exhibit A, Dkt. 1 ¶ 16.). Notably absent from the causes of action alleged is any claim for civil trespass.

7. The Defendants interposed Answers. (Answers are attached to the Defendants' original moving papers). The East Aurora Defendants served Interrogatories upon the plaintiff. A copy of the Interrogatories is attached to the Counter Statement of Facts as Exhibit A.

8. The Plaintiffs served responses to those interrogatories which are attached to the Counter Statement of Facts as Exhibit B.

9. Absent from the causes of action alleged in the complaint or any of the Interrogatory responses is any claim regarding trespass.

Dated: June 24, 2016
Buffalo, New York



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